

General Information Letter: Individual claiming credit for taxes paid to another state by a partnership on behalf of its partners must attach to his or her return a statement from the partnership supporting that claim.

July 9, 2002

Dear:

This is in response to your letter dated June 26, 2002, in which you request a legal opinion. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information, the regulation governing the issuance of letter rulings, *2 Ill. Adm. Code Part 1200* regarding rulings and other information issued by the Department, can be accessed at the Department's website. That address is www.revenue.state.il.us/legalinformation/regs/part1200.

The nature of your question and the information provided require that we respond only with a GIL.

In your letter you state as follows:

COMPANY1, predecessor to COMPANY2, sought and received a Private Letter Ruling from the Illinois Department of Revenue, dated November 2, 1977. The subject of this private letter ruling was the policy of the Illinois Department of Revenue, which requires that taxpayers, to claim credit for taxes paid to other states, attach to their Illinois income tax return copies of other states returns. A copy of this letter ruling is attached.

This letter ruling permitted partners of COMPANY2 to substitute two schedules, one showing tax paid by COMPANY2 on the partners behalf, and a second showing the distributive share of the partnerships income apportioned to each state, for the copies of the other states returns. Copies of the schedules distributed to COMPANY2's partners for the fiscal year ending May 31, 2001 are attached as Schedule A and Schedule B.

This ruling benefited both the Department and COMPANY2 by reducing the amount of paper that had to be filed with our partners' returns, thus reducing the administrative burden on both the Department and COMPANY2.

COMPANY2 is aware of a recent amendment to 2 Ill. Admin. Code Sec. 1200.110(e), which provides that, as of July 2, 2002, taxpayers may not rely on any Private Letter Ruling after the expiration of ten years from the issue date.

While not conceding the Department's authority to unilaterally terminate the binding effect of the above mentioned private letter ruling issued to COMPANY2, we would like to apply for a private letter ruling ratifying the relief given in the November 2, 1977 letter ruling.

2 Ill. Admin. Code Sec. 1200.110(b) information follows:

1. COMPANY2 is a Delaware Limited Liability Partnership that files a state partnership return in every state in which it does business. COMPANY2 files a composite return reporting its non-resident partners' liability for state income tax in Arizona, California, Colorado, Illinois, Indiana, Maryland, Missouri, New Mexico, Ohio, and Virginia. Under 35 ILCS 5/601(b)(3) Illinois residents are entitled to a credit against their Illinois income tax obligation for taxes paid to other states.

IITA Sec. 601(b)(3) provides that persons claiming this credit shall attach a statement in support of the claimed credit. The Department's policy, as set forth in the instructions for preparation of Form IL-1040 Individual Income Tax Return, is that claimants must attach an IDOR Schedule CR to their return, along with copies of all out of state returns.

Providing copies of all out of state returns to COMPANY2's Illinois partners represents a significant administrative burden and expense. The Department also suffers a significant administrative burden in processing the partner's' returns with all the other states partnership and composite returns attached. In 1977 COMPANY2 proposed, and the Department permitted, that two schedules be prepared providing information from which COMPANY2's Illinois partners, credit for tax paid to another state could be determined.

Schedule A sets out the amount of tax paid to each state by COMPANY2 on behalf of its partners. Schedule B sets out the amount of income allocated to each non-resident partner in each state.

COMPANY2 maintains information substantiating the schedules.

2. COMPANY2 files on a fiscal year basis with its fiscal year ending May 31. Its return for the fiscal year ending May 31, 2002 is not yet due. The letter ruling dated November 2, 1977 is apparently valid through the fiscal year-end, but not the due date for the return. To the best information of those involved in the preparation of this request, COMPANY2 is not under audit and is not a party to litigation with the Department regarding it or its partners Illinois State tax obligations.
3. As noted above, the Department has previously issued a letter ruling to COMPANY2 regarding this same issue. To the best information of those involved in the preparation of this request, no request for a private letter ruling submitted on behalf of Clifton has been withdrawn prior to the issuance of a letter ruling.
4. 35 ILCS 5/601(b)(3) requires a statement in support of a credit for foreign state taxes be attached to the taxpayer's return. To the best information of those involved in the preparation of this request, there are no regulations addressing this issue. The policy of the Department, as set out in the instructions, requires that returns for the foreign states be attached to the return of a taxpayer claiming a credit for tax paid to another state. However the instructions to Schedule CR provide that "If you are a member of a partnership or S corporation that pays tax for you in another state, attach a copy of the letter or statement (not the federal Schedule K-1) furnished to you by them. This letter must include the partnership or S corporation name or FEIN number, the

income and the tax paid on your behalf," The Department also ruled in PLR No. IT 97-0011 and IT 97-0012 that schedules that would appear to be substantially the same as those used by COMPANY2 were sufficient documentation. COMPANY2 requests the Department ratify its relaxation of its policy requiring attachment of foreign states returns. This does not violate the statutory requirement for attachment of a statement supporting the claimed credit. COMPANY2 will prospectively add its FEIN to the schedules.

5. Those involved in preparing this request have been unable to find contrary authority to the relief requested in this ruling.
6. COMPANY2 requests that its identity, the listing of states in which it files a partnership return and the exhibits be deleted from the publicly disseminated version of the private letter ruling.

The partnership return for COMPANY2's fiscal year ending May 31, 2002 is due on September 16, 2002. It would be most helpful if we had your response by that date.

In response to your inquiry, please be advised that the Department has proposed a regulation, *86 Ill. Adm. Code Section 100.2197*, regarding the foreign tax credit, which covers this situation. It states in relevant part as follows:

Section 100.2197 Foreign Tax Credit (IITA § 601(b)(3))

g) Documentation required to support claims for credit. Any person claiming the credit under IITA Section 601(b)(3) shall attach a statement in support thereof and shall notify the Director of any refund or reductions in the amount of tax claimed as a credit under IITA Section ...[601(b)(3)] (sic)... all in such manner and at such time as the Department shall by regulations prescribe. No credit shall be allowed under this section for any tax paid to another state nor shall any item of income be included in base income subject to tax in that state except to the extent the amount of such tax and income is evidenced by the following documentation attached to the taxpayer's return (or, in the case of an electronically-filed return, to the taxpayer's Form IL-8453, Illinois Individual Income Tax Electronic Filing Declaration), amended return or claim for refund:

- 1) Unless otherwise provided in this subsection (g), a taxpayer claiming the credit must attach a copy of the tax return filed for taxes paid to the other state or states to the taxpayer's Illinois income tax return, Form IL-8453, amended return or claim for refund.
- 2) If the tax owed to the other state is satisfied by withholding of the tax from payments due to the taxpayer without the necessity of a return filing by the taxpayer, the taxpayer must attach a copy of the statement provided by the payor evidencing the amount of tax withheld and the amount of income subject to withholding.
- 3) A taxpayer claiming a credit for taxes paid by a Subchapter S corporation or partnership on the taxpayer's behalf must attach a copy of the statement provided to the taxpayer by the Subchapter S corporation or partnership pursuant to subsection (f) of this section, showing the

taxpayer's share of the taxes paid and the income of the taxpayer on which the taxes were paid.

This regulation, while not yet adopted, sets forth the Department's policy on this issue. It may be viewed in its entirety at the Department's website mentioned above.

Your letter states that COMPANY2 proposes to prepare, and maintain information substantiating, schedules for its Illinois partners disclosing respectively the amount of tax paid to each state by it on behalf of its partners, and the amount of income allocated to each non-resident partner in each state. These schedules would appear to fulfill the requirements of subsection (g) of the aforementioned draft regulation. Consequently, the Department would allow them as sufficient documentation for Illinois resident partners in order to claim the foreign tax credit.

As stated above, this is a GIL which does not constitute a statement of policy that applies, interprets or prescribes the tax laws, and it is not binding on the Department. If you wish to obtain a PLR which will bind the Department with respect to the application of the law to specific facts, please submit a request conforming to the requirements of *2 Ill. Adm. Code Part 1200*.

Sincerely yours,

Jackson E. Donley,
Senior Counsel-Income Tax